



Federal Highway Administration

23 CFR Part 490

[Docket No. FHWA-2023-0014]

RIN 2125-AG06

National Performance Management Measures; Extenuating Circumstances, Highway Performance Monitoring System Data Field Names, Safety Performance Measure, Pavement Condition Measure, and Freight Performance Measure

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Notice of Proposed Rulemaking (NPRM); request for comments.

SUMMARY: This rulemaking proposes updates to the National Performance Management Measures regulations to consider impacts of national emergencies on performance achievement, address compliance determinations and penalty assessment for the pavement condition measures, clarify data collection standards and requirements, adjust freight reporting to align with the 4-year update cycle for State Freight Plans in the Bipartisan Infrastructure Law (BIL), and provide select clarifying technical corrections. The rulemaking would also incorporate by reference the Highway Performance Monitoring System (HPMS) Field Manual, which includes updated fields related to the collection of Transportation Performance Management (TPM) data. This rulemaking also would provide for greater opportunities for meaningful safety performance targets and outcomes, consider approaches to alternative safety performance measures, and align performance targets for the three common measures that must be identical with the National Highway Traffic Safety Administration (NHTSA).

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To ensure that you do not duplicate your docket submissions, please submit comments by only one of the following means:

- Federal eRulemaking Portal: Go to www.regulations.gov and follow the online instructions for submitting comments.
- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590.
- Hand Delivery: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366-9329.

All submissions should include the agency name and the docket number that appears in the heading of this document or the Regulation Identifier Number (RIN) for the rulemaking. All comments received will be posted without change to www.regulations.gov, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Mrs. Alexis Kuklenski, Office of Infrastructure (HIF), (202) 689-9229, or via email at alexis.kuklenski@dot.gov, or Ms. Dawn Horan, Office of the Chief Counsel (HCC-30), (202) 366-9615, or via email at Dawn.M.Horan@dot.gov. Office hours are from 8 a.m. to 4:30 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

This document and all comments received may be viewed online through the Federal eRulemaking portal at www.regulations.gov using the docket number listed above. Electronic retrieval help and guidelines are also available at www.regulations.gov. An electronic copy of this document may also be downloaded from the Office of the Federal Register's Website at www.FederalRegister.gov and the

Government Publishing Office's Website at www.GovInfo.gov.

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, FHWA will also continue to file relevant information in the docket as it becomes available after the comment period closing date and interested persons should continue to examine the docket for new material. A final rule may be published at any time after close of the comment period and after DOT has had the opportunity to review the comments submitted.

I. Background and Regulatory History

The Moving Ahead for Progress in the 21st Century Act (MAP-21) (Pub. L. 112-141) and the Fixing America's Surface Transportation (FAST) Act (Pub. L. 114-94) transformed the Federal-aid highway program by establishing performance management requirements. On November 14, 2021, President Biden signed the BIL, enacted as the Infrastructure Investment and Jobs Act (Pub. L. 117-58), which continued the performance management requirements. Such requirements aim to increase accountability and transparency and facilitate efficient investment of Federal transportation funds through a focus on performance outcomes for seven national transportation goals concerning safety, infrastructure condition, congestion reduction, system reliability, freight movement and economic vitality, environmental sustainability, and reduced project delivery delays. See 23 U.S.C. 150(b). Through performance management, recipients of Federal-aid highway funds make transportation investments to achieve performance targets that make progress toward those national goals. The FHWA's performance management regulations created a framework to more effectively

evaluate and report on the Nation's surface transportation performance. The FHWA's performance management requirements are codified in 23 CFR part 490.

Most relevant to the proposed rulemaking, the performance management framework requires State departments of transportation (State DOT) to biennially establish performance targets related to the National Highway Performance Program (NHPP) and National Highway Freight Program (NHFP) Congestion Mitigation and Air Quality Improvement Program. State DOTs then report progress towards those targets biennially per § 490.107.

In addition, FHWA conducts a biennial assessment of the State DOT's progress toward the achievement of individual NHPP and NHFP targets. This assessment is commonly called the significant progress determination. If a State DOT fails to make significant progress toward the achievement of an applicable target, additional reporting to document how progress will be made is required for all targets in the measure area.

For the freight measure only, as part of the biennial reporting, the State DOT also provides the location of truck freight bottlenecks within the State and reports on progress toward addressing the congestion at these locations. The regulation allows the State DOT to use their State Freight Plan prepared under 49 U.S.C. 70202 to meet these requirements when it is less than 2 years old.

As part the State DOT's biennial reporting, the State DOT can provide an explanation of how any extenuating circumstances listed in the regulation prevented it from making significant progress toward the achievement of an individual target. The State DOT must also quantify the impacts on the condition/performance that resulted from the extenuating circumstance(s). The FHWA expects that the application of extenuating circumstances would occur for unique events and would not be regularly applied. If FHWA accepts the State DOT's explanation, FHWA classifies the progress toward achieving the relevant target(s) as "progress not determined," and those targets

are excluded from the requirement to make significant progress toward the achievement of applicable targets.

In addition, for the Interstate System pavement condition measures, §§ 490.105(c)(1) and (c)(2), State DOTs are allowed to have no more than 5.0 percent of their Interstate System in poor condition. Alaska alone is not allowed to exceed 10.0 percent. The minimum condition requirements for Interstate pavements are described in § 490.316. When a State DOT exceeds the minimum condition level for Interstate pavements, penalties apply, as described in § 490.317. To determine if the penalty will apply, FHWA annually determines if the State DOT is in compliance with the minimum condition thresholds in § 490.315(a) or § 490.315(b) and 23 U.S.C. 119(f)(1).

The five safety measures listed at § 490.205 have a slightly different target setting and reporting framework than the other TPM measures in 23 CFR part 490. For the five safety measures, each performance measure is based on a 5-year rolling average, and targets are established annually consistent with § 490.209. The State DOT targets are to be identical to the targets established by the State Highway Safety Office for common performance measures reported in the State's Highway Safety Plan, subject to the requirements of 23 U.S.C. 402(k)(4), and as coordinated through the State Strategic Highway Safety Plan. The targets established by the State DOT are reported to FHWA in the State's Highway Safety Improvement Program (HSIP) annual report in accordance with 23 CFR part 924. As with the other measures, FHWA assesses the State DOT's progress toward the achievement of its safety targets. This assessment is commonly called the significant progress determination. If a State DOT fails to meet or make significant progress toward the achievement of four of the five safety targets, the State DOT must comply with 23 U.S.C. 148(i) for the subsequent three fiscal years. This means that State DOTs would be submitting a single HSIP Implementation Plan covering the next three fiscal years and must use their obligation authority equal to the

apportionment of the State for the prior year for the next three fiscal years only for highway safety improvement projects. The FHWA invites comments on this proposed approach.

A. Summary of Expected Schedule for Implementation

The FHWA understands that the timing of this rulemaking will impact performance cycle data submission. The FHWA will develop phase-in timeframe compliance dates and other implementation guidance at the conclusion of the rulemaking process. Under Subpart B, FHWA proposes to align the target setting performance cycle with NHTSA's final rule¹ that sets forth two new requirements with respect to the safety performance targets set by the State Highway Safety Office (HSO): (1) States must develop a triennial HSP and (2) performance targets must demonstrate constant or improved performance. The proposed changes to the FHWA regulation would shift the reporting cycle of the HSIP performance targets from an annual to a triennial cycle.

If this new regulatory language goes into effect, the next triennial cycle under these proposed revised requirements is expected to be for the HSIP safety performance targets reported in August 2024 representing safety performance for calendar years 2025 through 2027, based on a 3-year average. However, this cycle will not align with NHTSA's current triennial cycle (2024-2026) for the safety performance targets submitted by State HSOs in their triennial Highway Safety Plans (3HSP) in July 2023. As a result, FHWA is seeking comment on how to approach aligning FHWA's triennial cycle with NHTSA's triennial cycle.

¹ Uniform Procedures for State Highway Safety Grant Programs Final Rule: <https://www.federalregister.gov/documents/2023/02/06/2023-01819/uniform-procedures-for-state-highway-safety-grant-programs>.

One option would be for FHWA to require States to align with NHTSA's 2024-2026 triennial cycle in their August 2024 HSIP Annual Report. This would require States to retroactively report 2024 data for their first triennial cycle (2024-2026) in their August 2024 HSIP Annual Report. Under this option, States could choose to submit the established targets that SHSOs submitted to NHTSA in July 2023, or work with the SHSOs to reset the triennial targets so it is identical for the common safety performance measures.

Another option for consideration would be to waive the requirement for identical performance targets between NHTSA and FHWA programs for CY 2025 and CY 2026 and have the State DOTs continue to submit annual safety performance targets based on 5-year averages (as per the current regulation) in their HSIP Annual Reports until NHTSA's next triennial cycle (2027-2029). This option would require State DOTs to first report identical targets for the common safety performance measures in their August 2026 HSIP Annual Report for CY 2027 through 2029, based on a 3-year average, which would align with the safety performance targets submitted by State HSOs in the 3 HSP in July 2026. The FHWA specifically requests comments regarding this topic.

II. Section-by-Section Discussion of the Proposed Changes

The FHWA proposes substantive changes to three subparts of 23 CFR part 490: Subpart A—General Information, which applies to all of the regulations throughout part 490; Subpart B - National Performance Management Measures for the Highway Safety Improvement Program; and Subpart E—National Performance Management Measures to Assess Performance of the National Highway System. This section of the preamble describes the proposed changes and the reasons behind them. The FHWA has also proposed several non-substantive changes throughout the regulatory text to remove the phrase “and/or” and replace it with “and” or “or”, as appropriate, to provide increased clarity. The proposed rule would apply to the 50 States, the District of Columbia, and

Puerto Rico consistent with the definition of the term “State” in 23 U.S.C. 101(a). The FHWA has included questions to the public on issues where comments may be particularly useful in facilitating implementation of the proposals.

A. Subpart A—General Information

Section 490.103 Data Requirements

The FHWA proposes to add § 490.103(h) to allow a temporary extension of any date within the part for good cause, unless an extension of that date is prohibited by law. The FHWA desires to have, and be able to exercise, flexibility when unforeseen circumstances arise that would cause undue hardship on the State DOTs or Metropolitan Planning Organizations (MPO) when complying with the provisions in this part.

Section 490.107 Reporting on performance targets

The FHWA proposes to revise paragraphs of § 490.107 to align with section 21104(c) of the BIL, which amended the State Freight Plan requirements of 49 U.S.C. 70202(e). State DOTs are now required to update their State Freight Plans every 4 years, as opposed to the 5 years that were required by the FAST Act. Congress made this change through BIL to better align the timing of State Freight Plan updates with other State transportation planning efforts, including the TPM Program established under MAP-21. Since BIL created a 4-year update cycle for State Freight Plans, there will now be an updated State Freight Plan within each 4-year TPM reporting cycle.

The FHWA is proposing to remove the text in §§ 490.107(b)(1)(ii)(E) and 490.107(b)(2)(ii)(D) that requires a State Freight Plan prepared under 49 U.S.C. 70202 be done within the previous 2-years for it to be used as the basis for identifying freight bottlenecks and addressing congestion at truck freight bottlenecks in the biennial report. The FHWA’s proposal would allow the most recent State Freight Plan prepared under 49 U.S.C. 70202 to be used.

In § 490.107(b)(2)(ii)(D), for the Mid and Full Performance Period Progress Report, if the State Freight Plan has not been updated in the last 2 years, “then an updated analysis of congestion at truck freight bottlenecks must be completed.” Some State DOTs misinterpreted this as requiring the submission of an updated bottleneck list. The FHWA is proposing revisions to clarify FHWA’s expectation State DOTs will identify bottlenecks at the baseline and will provide a discussion of progress toward addressing congestion at those points in the Mid and Full Performance Period Progress Reports. The proposed change is intended to clarify expectations but not change them.

In addition, as part of the Mid and Full Performance Period Progress Reports, the State DOT must discuss their efforts to address congestion at truck freight bottlenecks and the State Freight Plan may serve as the basis for discussing how congestion has been addressed at truck freight bottlenecks. The FHWA is proposing to add language to § 490.107(b)(2)(ii)(D) to clarify that the State DOT needs to update the information from the previous State Biennial Performance Report. If the information in the previous State Biennial Performance Report was from the current State Freight Plan, this information needs to be reviewed and updated as necessary with the next State Biennial Performance Report. This clarification is consistent with FHWA’s existing guidance.

The FHWA has also proposed a technical correction to § 490.107(b)(2)(ii)(D) and 490.107(b)(3)(ii)(D). The FHWA is proposing to change “...paragraph (b)(1)(ii)(F)...” to “...paragraph (b)(1)(ii)(E)...” in both locations.

Section 490.109 Assessing significant progress toward achieving the performance targets for the National Highway Performance Program and the National Highway Freight Program

The FHWA proposes to add specificity to the paragraph reference in

§ 490.109(e)(4)(ii) from (d)(1) to (d)(1)(i), and revise the paragraph reference in § 490.109(e)(4)(iv) from (d)(3) to (d)(1)(iii). These are technical corrections to the cross references and do not change the intent of the regulations.

The FHWA proposes to correct the paragraph reference in § 490.109(e)(4)(iii) from (d)(2) to (d)(1)(ii), and correct § 490.313(b)(4)(i) by changing it to § 490.313(b)(4)(ii) to align with the changes proposed to § 490.313(b)(4). These are technical corrections that are not intended to change the requirements in § 490.109(e)(4)(iii).

The FHWA proposes to revise § 490.109(e)(4)(v) to clarify FHWA’s approach for determining significant progress when reported data for baseline condition/performance is determined “insufficient” in the year in which the Baseline Performance Period Report is due to FHWA. This approach was previously documented in the preamble for the 2017 Final Rule for the pavement and bridge performance measures.² If the data for baseline condition/performance is determined insufficient, the comparison between the baseline condition/performance and the actual condition/performance cannot be made. In this situation, FHWA will make a significant progress determination for that measure by comparing the target to the actual condition/performance. The FHWA will determine that a State DOT has not made significant progress toward the achievement of a target if data for the baseline condition/performance was determined insufficient previously, and the actual condition/performance level is not equal to or better than the established target. The

² National Performance Management Measures; Assessing Pavement Condition for the National Highway Performance Program and Bridge Condition for the National Highway Performance Program [RIN 2125–AF53], 82 FR 5886 at page 5921 (January 18, 2017).

proposed revision to the regulatory text is a technical correction that does not change the intent or application of the regulation.

The FHWA proposes to amend § 490.109 by adding a new paragraph (e)(5)(ii)(D) providing that an applicable extenuating circumstance includes a presidentially declared national emergency, which would cover events such as national public health emergencies. With various governmental units and agencies possibly having the ability to declare disasters, FHWA proposes to clarify in § 490.109 that natural or man-made disasters must be declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. The inclusion of this regulatory language is necessary to enable State DOTs to request relief from the requirements for not making significant progress toward achieving their performance targets because of extenuating circumstances due to the impacts of a presidentially declared national emergency. This new extenuating circumstance would apply to progress requirements under the NHPP and the NHFP. As with the current allowance for existing extenuating circumstances, State DOTs would be required to provide sufficient evidence showing how the adverse impacts limited their ability to meet performance expectations in order to receive regulatory relief.

When originally drafted, a national public health emergency was not contemplated. The proposed addition of national emergency is intended to address this gap but is not expected to substantially change the types of allowable extenuating circumstances, nor is it expected to substantially increase the number of times extenuating circumstances are applied. Thus, FHWA has estimated this would result in a nominal reduction in burden.

It is possible that the extenuating circumstances listed in § 490.109(e)(5) may also impact a State DOT's ability to supply sufficient data or information, as required in § 490.109(e)(4). The FHWA has not proposed additional language to specify that a national emergency or any other extenuating circumstance will be considered in relation

to FHWA's significant progress determination due to insufficient data or information, because it is already addressed by § 490.109(e)(5)(ii).

The FHWA is proposing to revise terms in § 490.109(f)(2)(iii)(A) to align with the HPMS as reflected in the updated HPMS Field Manual and incorporated by reference as part of this NPRM. See the section-by-section discussion in § 490.111 for further information on the proposed changes related to HPMS.

Section 490.111 Incorporation by reference

The FHWA is proposing to restructure this section to conform with new Office of the Federal Register formatting requirements. The FHWA is proposing updating the HPMS Field Manual that is currently incorporated by reference in § 490.111(b)(1), and included in the docket for this NPRM. The FHWA's HPMS software was updated to version 9, and the associated database fields that impact TPM were modified to address necessary changes identified in the 2018 HPMS Reassessment. The HPMS Field Manual was similarly updated to improve readability and reflect changes made to the HPMS software, processes, and table structures, as well as to data items, estimate types, and metadata. The regulations in part 490 contain several specific HPMS field names to ensure consistency in the data over time. Thus, it was necessary to update the individual instances in the regulation. The FHWA does not expect the field name changes within HPMS to present a burden to State DOTs when complying with the requirements of this part.

The proposed changes within the regulation to align with the terms in the incorporated HPMS Field Manual are:

Route_ID to RouteID

Begin_Point to BeginPoint

End_Point to EndPoint

Year_Record to BeginDate

Value _Date to ValueDate

Inventory data elements - This summary term was removed from the HPMS Field Manual. Where used in the regulation, FHWA is proposing replacing it with the specific data elements it represented.

The FHWA is proposing to remove the American Association of State Highway and Transportation Officials (AASHTO) Standard R48-10 (2013), Standard Specification for Transportation Materials and Methods of Sampling and Testing, Standard Practice for Determining Rut Depth in Pavements, 2014, 34th/2014 edition, in § 490.111(c)(3) since it has been withdrawn by AASHTO. The HPMS Field Manual addresses automated rut data collection methods so no additional AASHTO Standards are needed at this time. .

The FHWA is proposing to update the AASHTO Standard in § 409.111(c)(4) from R36-13 to R36-21, Standard Specification for Transportation Materials and Methods of Sampling and Testing, Standard Practice for Evaluating Faulting of Concrete Pavements. This update to the Standard retains the two methods for measuring and calculating faulting using automated measurement devices. The most notable change to the new Standard is the incorporation of an acceptable third method for calculation of faulting using 3D techniques. This Standard is less restrictive than the original. A corresponding change is proposed in § 490.309(b)(3)(vii).

When FHWA published its first Transportation Performance Management Final Rule on March 15, 2016, at 81 FR 13882, it incorporated by reference at § 490.111(d) the ANSI D16.1-2007, Manual on Classification of Motor Vehicle Traffic Accidents (7th edition, approved August 2, 2007), and at § 490.111(e) the DOT's DOT HS 811 631, Model Minimum Uniform Crash Criteria (MMUCC) Guideline, (4th edition, July 2012). With the publication of the subsequent TPM rules on January 18, 2017, at 82 FR 5886 and 82 FR 5971, § 490.111(d) and (e) were inadvertently left out of the revised iterations of this section; however,

**there was no indication of the Agency’s intent to remove the incorporation by reference of either publication given that the references remain in other sections of subpart B. The FHWA proposes to restore the ANSI and DOT paragraphs to reflect the incorporation of the publications, while updating ANSI D.16-2007 to ANSI D.16-2017 and the MMUCC to the 6th edition, which State DOTs are required to use for the definition for Suspected Serious Injury. Both documents are available for review on the docket for this rulemaking.B. Subpart B—
National Performance Management Measures for the Highway Safety
Improvement Program**

Section 490.205 Definitions

The FHWA proposes to revise five definitions to provide clarity and consistency for each as related to the regulation and to remove one definition that is no longer necessary. The purpose of the revisions is to clarify the terms and definitions.

The FHWA proposes to revise the term for “5-year rolling average” to “3-year average” and to revise the definition to align with the proposed shift to triennial (every 3 years) performance targets. The FHWA proposes to remove the term “rolling” to align with the proposed shift from establishing performance targets every year to establishing performance targets every 3 years to cover a 3-year period.

The FHWA proposes to establish a definition for ‘baseline safety performance’ to allow for a single term that can be used consistently in 23 CFR part 490 subpart B. The proposed term is consistent with the term used in 23 CFR 490.213(d), the definition is consistent with how the concept is currently applied in 23 CFR 490.211(c)(2)(ii), and would not change the requirements of the existing regulation.

The FHWA proposes to revise the definition for “Fatality Analysis Reporting System (FARS)” to align with the NHTSA definition in 23 CFR 1300.3.

The FHWA proposes to revise the definition for “Number of non-motorized fatalities” to remove the attribute code numbers and to further clarify the person types under “Persons on Personal Conveyances” to align with the coding change that was made to the person attribute code in the Fatality Analysis Reporting System (FARS).³

The FHWA proposes a minor technical edit to the definition for “Number of non-motorized serious injuries” to correct the spelling of “pedalcyclist” in the definition.

The FHWA proposes to revise the definition for “Number of serious injuries” to remove the reference to KABCO and the use of conversion tables. This requirement is no longer applicable as the KABCO scale is no longer used for this purpose.

The FHWA proposes to revise the definition for “serious injuries” to remove the references to KABCO and conversion tables, as well as the reference to April 15, 2019. This requirement is no longer applicable as the KABCO scale is no longer used for this purpose.

The FHWA proposes to remove the term and definition for “KABCO” to align with the proposed changes that no longer require the use of the term.

Section 490.207 National Performance Management Measures for the Highway Safety Improvement Program

The FHWA proposes to revise § 490.207(b) to replace “5-year rolling average” with “3-year average” to align with the proposed shift to establish performance targets every 3 years. In addition, in § 490.207(b)(1) through (5), FHWA proposes to change each instance of the term “five” to “three” to correspond with the changes to the years and calculations for changing to a 3-year average. The FHWA proposes to clarify each instance of “target” to “performance target” for consistency and clarity. This revision

³ National Highway Traffic Safety Administration Fatality Analysis Reporting System: <https://www.nhtsa.gov/research-data/fatality-analysis-reporting-system-fars>

also occurs throughout §§ 490.207, 490.209, 490.211, and 490.213, but only this first instance is being documented here as it is a minor technical edit being made throughout the regulation. These proposed changes are expected to be a minimal burden to the State DOTs as it reduces the number of years of data required from 5 years to 3 years.

The FHWA proposes to remove § 490.207(c) as the requirement for State DOTs to report serious injuries by the April 15, 2019, deadline has passed, and the KABCO scale is no longer used for this purpose.

Section 490.209 Establishment of performance targets

The FHWA proposes to revise § 490.209(a) so State DOTs would shift from establishing performance targets annually to triennially (every 3 years) for each performance measure. The purpose of this change is to align with DOT's National Roadway Safety Strategy (NRSS),⁴ which sets an ambitious long-term goal of reaching zero fatalities. By providing a longer duration between performance cycles, States will have a greater opportunity to plan and implement safety countermeasures and evaluate the outcome and effectiveness of performance targets. This change to submit performance targets triennially also supports NHTSA's requirement under section 24102 of the BIL for States to submit a triennial Highway Safety Plan (HSP). The NHTSA has implemented this provision through a final rule published February 6, 2023, at 88 FR 7780. This change is necessary as it aligns with the State DOTs' requirement to report identical performance targets for three common measures between the HSIP and the triennial HSP. This proposed change is expected to be a minimal burden to the State DOTs as it reduces the requirement from reporting annually to triennially.

⁴ DOT's National Roadway Safety Strategy: <https://www.transportation.gov/NRSS>

The FHWA proposes to revise § 490.209(a)(2) to reflect the proposed change to triennial performance targets, as well as add language that specifies when the first triennial performance target shall be established. In addition, FHWA proposes to change reporting from the “HSIP annual report” to “reported to the FHWA.” This proposed change is expected to be of minimal burden to State DOTs as it reduces the requirement from reporting annually to triennially.

The FHWA proposes to remove § 490.209(a)(4) and replace it with a new requirement for State DOTs to establish performance targets that “demonstrate constant or improved performance from the baseline safety performance.” This proposed requirement addresses the recent increase in fatalities by requiring performance targets to offer realistic expectations toward achieving the long-term goal of zero roadway fatalities, which is consistent with DOT’s NRSS. This requirement also aligns with NHTSA’s requirement under section 24102 of the BIL (23 U.S.C. 402(k)(4)(A)(ii)) that performance targets submitted as part of the triennial HSP demonstrate constant or improved performance. Although BIL did not make a similar amendment to the performance management requirements in 23 U.S.C. 148, there is no indication that Congress was attempting to undermine or change FHWA’s and NHTSA’s regulations that require identical performance targets for the three common measures. Likewise, there is nothing in Title 23 that prohibits FHWA from adopting the same “constant or improved performance” standard required by section 24102. Given the national crisis of fatalities on our roadways, FHWA believes it is good public policy to have the same requirement for its Safety Performance Management Program. The NHTSA has implemented this provision through a final rule published February 6, 2023, at 88 FR 7780. This proposed change is necessary as it aligns with the State DOTs’ requirement to report identical performance targets for three common measures between HSIP and triennial HSP. This revision may impact the State DOTs that have set increasing

performance targets in prior years as it may result in a shift in the methodology used to establish performance targets. However, requiring identical performance targets is consistent with the national safety goals Congress established for the Federal-aid highway program and NHTSA's highway safety program: To reduce traffic fatalities and serious injuries (in the case of FHWA) and to reduce traffic accidents and the resulting deaths, injuries, and property damage (in the case of NHTSA) (23 U.S.C. 150(b)(1) and 23 U.S.C. 402(a)). Furthermore, allowing a State to establish two different safety performance targets for common performance measures would be inefficient and could lead to public confusion. Separate performance targets could also be a burden on States by possibly requiring the collecting and reporting of two different sets of data for common performance measures in an HSIP and triennial HSP.

The FHWA proposes to remove § 490.209(a)(5), as the portion of this requirement related to use of the KABCO system in lieu of compliance with MMUCC is no longer applicable. In addition, the portion of this section that relates to reporting has been updated in § 490.213.

The FHWA proposes to shift § 490.209(a)(6) to § 490.209(a)(5) and revise § 490.209(a)(6) to change "submitted in the HSIP annual report" to "submitted to the FHWA" to align with paragraph (a)(2). The FHWA is not expecting State DOT performance targets to change for a given triennial cycle once submitted to FHWA. This is consistent with FHWA's current practice, in which safety performance targets cannot be changed once submitted to FHWA.

The FHWA proposes to revise § 490.209(b)(1) to remove reference to "HSIP annual report" to align with § 490.209(a)(2).

The FHWA proposes to remove § 490.209(b)(4) as this requirement is addressed under reporting in § 490.213.

The FHWA proposes to revise § 490.209(c) to add the word “triennially” for establishing performance targets for MPOs to align with the shift from annual to every 3 years.

The FHWA proposes to revise § 490.209(c)(1) to change “HSIP annual report” to “the FHWA” to align with the update to § 490.209(a)(2).

The FHWA proposes to revise § 490.209(c)(4)(i) to remove the term “safety” target and replace it with “performance” target for clarity and consistency.

The FHWA proposes to revise § 490.209(c)(4)(ii) to remove the term “safety” target and replace it with “performance” target for clarity and consistency and to add the language “demonstrate constant or improved performance” to align with § 490.209(a)(4).
Section 490.211 Determining whether a State department of transportation has met or made significant progress toward meeting performance targets

The FHWA proposes to revise § 490.211(b) to add the term “annual” to “HSIP report” for clarity and consistency and to add the word “prepared” before “in accordance with.”

The FHWA proposes to revise § 490.211(c)(2) to use the newly defined “baseline safety performance” in place of “3-year average data for the performance measure for the year prior to the establishment of the State’s performance target.” This would not change the existing process.

The FHWA proposes to revise § 490.211(d) to add the number “3” prior to “fiscal years” to align with the shift to triennial performance targets.

The FHWA proposes to revise § 490.211(e) to change “first evaluate” to “determine” and to change “after the calendar year following the year” to “following the last calendar year” and change “annual” to “triennially.” These proposed changes align with the revisions under § 490.209(a)(2).

The FHWA proposes to add a new § 490.211(f) to address the phased in implementation of the requirements that will enable the performance targets established for 2023 to continue to be assessed to determine met or made significant progress by 2025.

The FHWA proposes to add a new § 490.211(g) to address insufficient data or information. The purpose of this requirement is to inform States that if they are not able to provide the necessary data in the HSIP annual report for the purposes of the performance target assessment that they will be deemed to have not met or made significant progress.

The FHWA proposes to add a new § 490.211(h) to consider extenuating circumstances in the assessment of progress toward met or made significant progress of triennial performance targets. In addition, FHWA proposes to add § 490.211(h)(1) to clarify that FHWA will classify the assessment of progress toward the triennial performance target as “progress not determined” if the State DOT has provided an explanation of the extenuating circumstances beyond the control of the State DOT that prevented it from meeting or making significant progress and the State DOT has quantified the impacts on the performance that resulted from the circumstances to include: (i) Natural or man-made disasters that caused delay in data collection; (ii) [Reserved] (iii) New law or regulation directing State DOTs to change metric or measure calculation; or (iv) Presidentially declared national emergency that impacts the collection or submittal of data. The circumstances added are intended to mirror those in § 490.109(e)(5)(i). With various governmental units and agencies possibly having the ability to declare disasters, FHWA proposes to clarify in § 490.211 that natural or man-made disasters must be declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. In order to keep most of the section numbering consistent

with § 490.109(e)(5)(i), FHWA is proposing to reserve § 490.211(h)(1)(ii) since FHWA does not provide any data associated with the safety performance measure.

The FHWA also proposes to add a new § 490.211(h)(2) that explains that if the State DOTs explanation is accepted by FHWA, then the progress toward achieving the relevant performance targets will be classified as “progress not determined.” These proposed changes are not expected to be a burden to the State DOTs; however, there may be a moderate impact on the burden to any State DOT that decides to pursue the option to provide documentation to quantify the impact resulting from the extenuating circumstance.

Section 490.213 Reporting of performance targets for the Highway Safety Improvement Program

The FHWA proposes to revise the title of § 490.213 to add the word “performance” before “targets” for clarity and consistency.

The FHWA proposes to revise § 490.213(a) to remove “in the State’s HSIP annual report” and specify the first due date as “[Date to be inserted], and then triennially thereafter.” The purpose of this change is to align with the proposed change to shift to triennial performance targets. The FHWA will reflect a specific first due date that will align with the appropriate performance cycle during the rulemaking process.

The FHWA proposes to add a new § 490.213(b) to specify that State DOTs shall report on actual performance annually in the HSIP annual report and the minimum amount of data that is required. The purpose of this change is to move this information that was originally under § 490.209 for the establishment of performance targets to reporting of performance targets in the HSIP. The FHWA proposes to also shift the original paragraphs (b) and (c) to now be (c) and (d).

The FHWA proposes to revise old paragraph (b) to now be (c) and to change “annually” to “triennially” to align with the proposed shift to establish performance targets every 3 years.

The FHWA proposes to revise old paragraph (c) to now be (d) and delete the word “safety” from “safety performance” for clarity and consistency.

C. Subpart C - National Performance Management Measures for the Assessing Pavement Condition

Section 490.309 Data requirements

The FHWA is proposing revisions to § 490.309(a) to remove ‘inventory data elements’ here, as well as from all 23 CFR part 490, since that term and associated grouping is not in the incorporated HPMS Field Manual. In addition, FHWA is proposing a technical correction to include underscores in ‘Through_Lanes,’ ‘Surface_Type,’ and ‘Structure_Type,’ consistent with other parts of the regulation. The FHWA also is proposing corrections to § 490.309(c) to include underscores in the same terms. These corrections are not expected to change implementation of the associated requirements.

The FHWA is proposing amending §§ 490.309(b)(1)(i)(B), (b)(2)(i)(B), and (b)(2)(ii)(B) to clarify that when the right most lane is not readily accessible due to a listed issue, then the adjacent lane is to be used; not any open lane. This will align the regulation with existing guidance.

The FHWA is proposing to amend §§ 490.309(b)(1)(iv)(A) and (b)(2)(iii)(A) so the numbers ‘0 to 5’ would be shown to the tenths decimal place, ‘0.1 to 5.0’, to be consistent with how the data is entered in HPMS.

The FHWA is proposing to revise § 490.309(b)(3)(vi) and remove (b)(3)(vi)(A) and (B). The FHWA is proposing to remove §490.309(b)(3)(vi)(A) because AASHTO has withdrawn Standard R48 that provided guidance for this type of data collection. As a

result, States will be required to use the methods identified in the HPMS Field Manual when collecting rutting data on the National Highway System (NHS).

The FHWA is proposing to revise § 490.309(b)(3)(vii) to change the incorporated AASHTO Standard from ‘R36-13’ to ‘R36-21.’ The AASHTO Standard R36-21 is an update to Standard R36-13, which retains the two methods for measuring and calculating faulting using automated measurement devices. The major change from the old standard to the new standard is the incorporation of an acceptable third method for calculation of faulting.

Section 490.311 Calculation of pavement metrics

The FHWA is proposing changes to § 490.311(a) to remove ‘inventory data elements’ since that term and associated grouping is not in the proposed HPMS Field Manual.

The FHWA is proposing to amend § 490.311(b)(5)(ii) so the numbers ‘0 to 5’ would be shown to the tenths decimal place, ‘0.1 to 5.0’, to be consistent with how the data is entered in HPMS.

The FHWA is proposing to revise the HPMS field names in § 490.311(c)(3)(i), (c)(3)(ii), and (c)(3)(iii) so they are consistent with the updated HPMS system, and the HPMS Field Manual.. The FHWA also proposes to add specificity to clarify that the ‘BeginDate’ shall be reported as required in the HPMS Field Manual. The term changes proposed are:

State_Code to StateID,

Route_ID to RouteID

Begin_Point to BeginPoint

End_Point to EndPoint

Year_Record to BeginDate

Value_Date to ValueDate.

These changes are to provide consistency with the terms used in the incorporated HPMS Field Manual and are not expected to change the burden associated with complying with the regulations.

The FHWA proposes to revise §§ 490.311(d), (d)(1), (d)(2), and (d)(3) to change the term ‘inventory data elements’ to ‘data items,’ and change ‘inventory data items’ to ‘data items.’ These changes are needed to be consistent with the incorporated HPMS Field Manual, which no longer uses these terms.

Section 490.313 Calculation of performance management measures

The FHWA is proposing changes to § 490.313(b)(4) and its paragraphs to clarify the intended application of the regulation by rewording and reorganizing the text and providing cross references to existing requirements for data submittal dates. No new requirements or processes are proposed, and the clarifications are consistent with FHWA’s existing guidance related to missing, invalid, or unresolved data. The FHWA also proposes updating terms in §§ 490.313(b)(v)(i) through (vii) to align with those used in the incorporated HPMS Field Manual, and correcting reference numbering related to §490.109(d) in § 490.313(b)(v). Together these changes are not expected to change the implementation of the requirements.

In § 490.313(f)(2) through (5), FHWA is proposing to remove the underscore from the terms “End_Point” and “Begin_Point” so it is consistent with the fields in the incorporated HPMS Field Manual.

Section 490.317 Penalties for not maintaining minimum Interstate System pavement condition

The FHWA proposes to amend § 490.317(c) by adding a new § 490.317(c)(1) providing that FHWA can use the previous years’ determination of compliance with the minimum condition requirements in § 490.315(a) or § 490.315(b) and 23 U.S.C. 119(f)(1) if FHWA determines a State DOT is not in compliance due to an extenuating

circumstance listed in § 490.109(e)(5) related to the collection or submittal of data.

Accurate data is required to make the compliance determination, and FHWA cannot waive the determination. During the COVID-19 pandemic, FHWA identified that it was possible that some State DOTs would be unable to collect pavement condition data because of COVID-19 related social distancing requirements. The FHWA is proposing to add § 490.317(c)(1) to allow FHWA to consider extenuating circumstances in their determination when sufficient data is not provided. State DOTs would need to notify FHWA of any applicable extenuating circumstances it would like FHWA to consider by June 15 of each year, as proposed in § 490.317(c)(2).

This additional flexibility would allow State DOTs to provide an explanation of the conditions beyond their control that impeded their ability to submit the data needed to calculate the pavement performance measures and determine minimum condition. This action will allow State DOTs to cite one of the extenuating circumstances in § 490.109(e)(5) and explain how it impacted their ability to collect or submit data. As with the use of extenuating circumstances in the significant progress determination, there would need to be sufficient evidence showing how the adverse impacts limited a State DOT's ability to meet the data collection and submittal requirements. If a State DOT provides an acceptable explanation of extenuating circumstances by June 15, FHWA would apply the previous year's determination to the determination for the current year.

Including this additional flexibility as part of FHWA's compliance determination for 23 U.S.C. 119(f)(1) would align with the intent of extenuating circumstances and its application within the significant progress determination process. The FHWA has determined this is an appropriate and necessary action but does not anticipate this to be used in the near-term.

The FHWA is not proposing a similar amendment to § 490.413, which relates to penalties for not maintaining minimum bridge conditions. Bridges are inspected every

2 years. If a bridge is not inspected due to an unforeseen issue, the existing National Bridge Inspection (NBI) data is used for FHWA's determination of compliance with 23 U.S.C. 119(f)(2). In addition, the penalty for not maintaining minimum bridge condition, described in § 490.413, is assessed using data for the previous 3 years. These items provide flexibilities not available to the Interstate System pavement condition measures.

Section 490.319 Other requirements

Section 490.319(c)(1) describes the minimum methods and processes the State DOTs shall include in their Data Quality Management Programs. The FHWA proposes to revise § 490.319(c)(1)(ii) to strike the word "manual" from the requirement to certify persons conducting data collection. A certification process was required in the original rule for the equipment and for individuals doing manual data collection but omitted equipment operators and other persons working in data collection. This change extends the certification to all persons conducting data collection including equipment operators. Network level data collection is done almost completely using automated equipment. Since the process for data collection is complex and the equipment is costly, every State already has process for training operators and other persons working in data collection even though there has not been a requirement to do so. A minor update to the Data Quality Management Plan for the State may be needed to describe the training program and certification process if it is not already in the Plan. The FHWA seeks comment from any State DOTs that do not already require training for those collecting data and operating associated equipment.

D. Discussion under 1 CFR Part 51

The FHWA is proposing to incorporate by reference the following standards:

The FHWA will incorporate by reference an updated version of the HPMS Field Manual. The proposed HPMS Field Manual includes detailed information on technical procedures to be used as reference by those collecting and reporting data for the

performance measures. The FHWA's HPMS software was updated to version 9, and the associated database fields that impact TPM were modified to address necessary changes. The updated HPMS Field Manual is included on the docket for this rulemaking and will be made available on the FHWA website once adopted.

The FHWA will incorporate by reference AASHTO Standard R36-21, Standard Practice for Evaluating Faulting of Concrete Pavements, 41st edition, 2021. This Standard provides a consistent means for identifying and reporting concrete pavement faults. The AASHTO standard is proposed because it is considered a best practice, specifically by State DOTs, and is recognized worldwide. This document is available at <https://store.transportation.org/Item/PublicationDetail?ID=4612> and on the docket for this rulemaking.

The FHWA will incorporate by reference ANSI D.16-2017, Manual on Classification of Motor Vehicle Traffic Crashes, eight edition, approved December 18, 2017. The primary purpose of ANSI D.16-2017 is to promote uniformity and comparability of motor vehicle crash statistics in Federal, State, and local jurisdictions. The uniformity of reporting that results from this standard facilitates development of data on crashes in and out of traffic for nationwide use. Such data becomes the basis for decisions about traffic safety initiatives throughout the country. This document is available at <https://www.transportation.gov/government/traffic-records/updated-ansi-d16-manual-classification-motor-vehicle-traffic-crashes>, and on the docket for this rulemaking.

The FHWA will incorporate by reference DOT HS 813 525 ("MMUCC"), Model Minimum Uniform Crash Criteria Guideline, 6th edition, 2024.. The MMUCC can help States generate the data necessary to quickly gain traffic safety insights. The guide is available at <https://www.nhtsa.gov/mmucc-1> and on the docket for this rulemaking.

The documents that FHWA is incorporating by reference are reasonably available to interested parties, primarily State DOTs, local agencies, and Tribal governments carrying out Federal-aid highway projects, and federally required data reporting. The incorporated HPMS Field Manual represents the reporting requirements of the HPMS system. The AASHTO manual, MMUCC, and Manual on Classification of Motor Vehicle Traffic Accidents represent the most recent refinements that professional organizations have formally accepted and are currently in use by the transportation industry. The documents incorporated by reference are available on the docket of this rulemaking and at the sources identified in the regulatory text below. The specific standards are discussed in greater detail elsewhere in this preamble.

III. Additional Requests for Comments

- The MAP-21 legislation required FHWA to develop a uniform method for States to measure and report pavement conditions indicating investment needs and mobility on the Interstate and non-Interstate NHS. This methodology is contained in § 490.313 and uses the HPMS for reporting pavement conditions. After experiencing the first 5 years of collecting and reporting this information, FHWA invites comments on the effectiveness of the methodology for the intended purposes and suggestions to improve the required measurement and reporting.
- To minimize the amount of missing pavement data reported to HPMS, the current regulations direct States to collect condition information from another lane when the right most lane is closed due to construction, closure, excessive congestion, or other events impacting access. Some States have indicated difficulties collecting condition information in areas under construction due to bridge replacements, detours, or other circumstances. The FHWA invites comments on how to best collect and report the required information in these challenging situations.

- For the purpose of carrying out 23 U.S.C. 148, the Secretary is required to establish measures for States to use to assess (A) serious injuries and fatalities per vehicle mile traveled; and (B) the number of serious injuries and fatalities (23 U.S.C. 150(c)(4)). The FHWA is seeking comments on possible alternative safety performance measures that could be used to assess safety performance related to the HSIP. These performance measures should be directly related to the State's HSIP and help provide quantifiable evidence toward progress of safety performance. These performance measures may evaluate the outputs (quantitative and indicate the level of activity or effort) or outcomes (provide an indication of effectiveness) resulting in the implementation of the HSIP. The FHWA also seeks comment on whether FHWA should maintain the existing safety performance measures, replace the existing safety performance measures with alternative safety performance measures, or use some combination of both to assess future safety performance.
- The existing TPM measures for pavement and bridge condition in 23 U.S.C. 150(c)(3) are limited to the Interstate and NHS. However, there is also considerable need on the non-NHS system for infrastructure improvements. For example, approximately 90 percent of the bridges in poor condition in the 2022 National Bridge Inventory dataset are non-NHS bridges. Would State DOTs and MPOs benefit from the creation of national performance measures for the non-NHS system? For non-NHS bridges, condition data is already collected and reported annually to FHWA and can be used to set targets and report on performance. For non-NHS pavement performance, FHWA collects condition data on a sample of these roadways in each State. What would be reasonable measures, target setting timelines, data collection methods, reporting frequency, and reporting methods for any non-NHS measures? If such national performance

measures are created, what would be needed to collect, report, and analyze non-NHS data and implement such a program?

IV. Rulemaking Analyses and Notices

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), E.O. 14094 (Modernizing Regulatory Review), and DOT Regulatory Policies and Procedures

The FHWA has considered the impacts of this proposed rule under E.O. 12866 (58 FR 5173, Oct. 4, 1993), Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, Jan. 21, 2011), Improving Regulation and Regulatory Review and E.O. 14094 (88 FR 21879, April 6, 2023), Modernizing Regulatory Review, and DOT's regulatory policies and procedures. The Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB) has determined that the proposed rule is not a significant regulatory action within the meaning of E.O. 12866.

Accordingly, OMB has not reviewed it under that E.O.

It is anticipated that the proposed rule would not be economically significant for purposes of E.O. 12866. The proposed rule would not have an annual effect on the economy of \$200 million or more. The proposed rule would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or Tribal governments or communities. In addition, the proposed changes would not interfere with any action taken or planned by another Agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

B. Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601-612), FHWA has evaluated the effects of this proposed rule on small entities and has determined that it is not anticipated to have a significant economic impact on a

substantial number of small entities. For FHWA's significant progress determination in § 490.109(e) and for the minimum condition requirements for Interstate pavements in § 490.317, the proposed rule would affect State governments, but not MPOs since MPOs are not subject to these requirements. State governments are not included in the definition of small entity set forth in 5 U.S.C. 601. For FHWA's proposed triennial safety performance reporting, both MPOs and State DOTs would be affected, but the proposed changes are expected to reduce overall burden. Therefore, FHWA certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, 109 Stat. 48). This proposed rule would not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$168 million or more in any one year (2 U.S.C. 1532). In addition, the definition of "Federal Mandate" in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or Tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. The Federal-aid highway program permits this type of flexibility.

D. E.O. 13132 (Federalism Assessment)

This proposed rule has been analyzed in accordance with the principles and criteria contained in E.O. 13132, and FHWA has determined that this proposed rule would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA also has determined that this proposed rule would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

E. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from OMB for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this proposal does not contain any new collection of information requirements for the purposes of the PRA.

This proposed rule expands upon existing flexibilities that are implemented as part of the overarching TPM regulations in 23 CFR part 490, which includes State DOT reporting on performance biennially. The collection of biennial report information in support of § 490.107, including the State DOT's documentation of any applicable extenuating circumstances described in § 490.105(e), is covered by OMB Control No. 2125-0656.

The proposed rule would change the reporting on safety performance targets from annual to triennial. Targets and performance would be reported on in the HSIP annual report. The collection of information in support of § 490.213 is covered by OMB Control No 2125-0025.

F. National Environmental Policy Act

The FHWA has analyzed this proposed rule pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and has determined that it is categorically excluded under section 771.117(c)(20), which applies to the promulgation of rules, regulations, and directives. Categorically excluded actions meet the criteria for categorical exclusions under the Council on Environmental Quality regulations and under section 771.117(a) and normally do not require any further NEPA approvals by FHWA.

G. E.O. 13175 (Tribal Consultation)

The FHWA has analyzed this proposed rule in accordance with the principles and criteria contained in E.O. 13175, “Consultation and Coordination with Indian Tribal Governments.” The proposed rule would implement additional flexibilities in 23 CFR part 490 related to FHWA determination of significant progress toward State DOT NHPP and NHFP measure, and FHWA’s determination of State DOT’s compliance with Interstate pavement minimum conditions. The requirements of 23 CFR part 490 apply to States that receive Title 23 Federal-aid highway funds, and it would not have substantial direct effects on one or more Indian Tribes, would not impose substantial direct compliance costs on Indian Tribal governments, and would not preempt Tribal laws. Accordingly, the funding and consultation requirements of E.O. 13175 do not apply and a Tribal summary impact statement is not required.

I. E.O. 12898 (Environmental Justice)

The E.O. 12898 requires that each Federal Agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high, and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. The FHWA has determined that this proposed rule does not raise any environmental justice issues.

J. Regulation Identifier Number

A RIN is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR part 490

Bridges, Highway safety, Highways and roads, Incorporation by reference, Reporting and recordkeeping requirements.

Issued under authority delegated in 49 CFR 1.81 and 1.85 on:

Shailen P. Bhatt,
Administrator,
Federal Highway Administration.

In consideration of the foregoing, FHWA proposes to amend 23 CFR part 490, as set forth below:

PART 490—NATIONAL PERFORMANCE MANAGEMENT MEASURES

1. The authority citation for part 490 is revised to read as follows:

Authority: 23 U.S.C. 134, 135, 148, and 150; 49 CFR 1.85.

Subpart A – General Information

2. Amend § 490.103 by:

- a. In paragraph (b), adding the text “(incorporated by reference, see § 490.111)”

immediately following the text “HPMS Field Manual”; and

- b. Adding paragraph (h).

The additions read as follows:

§ 490.103 Data requirements.

* * * * *

(h) *In general.* FHWA may temporarily extend any date within this part for good reason, unless prohibited by law.

3. Amend § 490.105 by revising paragraphs (e)(8)(iii) and (f)(5)(iii) by removing the text “and/or” and adding, in its place the text “and” in each place it appears.

4. Amend § 490.107 by revising paragraphs (b)(1)(ii)(E), (b)(2)(ii)(D), and (b)(3)(ii)(D) to read as follows:

§ 490.107 Reporting on performance targets.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(E) *Congestion at truck freight bottlenecks.* The State DOT shall document the location of truck freight bottlenecks within the State, including those identified in the National Freight Strategic Plan. If a State has prepared a State Freight Plan under 49 U.S.C. 70202, then the State Freight Plan may serve as the basis for identifying truck freight bottlenecks;

* * * * *

(2) * * *

(ii) * * *

(D) *Congestion at truck freight bottlenecks.* Discussion on progress of the State DOT's efforts in addressing congestion at truck freight bottlenecks within the State, as described in paragraph (b)(1)(ii)(E) of this section, through comprehensive freight improvement efforts of State Freight Plan or MPO freight plans; the Statewide Transportation Improvement Program and Transportation Improvement Program; regional or corridor level efforts; other related planning efforts; and operational and capital activities targeted to improve freight movement on the Interstate System. If a State has prepared a State Freight Plan under 49 U.S.C. 70202, then the State Freight Plan may serve as the basis for addressing congestion at truck freight bottlenecks. However, the discussion must provide an update from the information submitted in the previous State Biennial Performance Report;

* * * * *

(3) * * *

(ii) * * *

(D) *Congestion at truck freight bottlenecks.* Discussion on progress of the State DOT's efforts in addressing congestion at truck freight bottlenecks within the State, as described in paragraphs (b)(1)(ii)(E) and (b)(2)(ii)(D) of this section;

* * * * *

5. Amend § 490.109 by:

a. Removing the text “and/or” and adding, in its place, the text “or” in each place it appears;

b. Revising paragraphs (e)(4) paragraph heading, (e)(4)(ii) through (v) and (e)(5)(i)(A) through (C);

c. Adding paragraph (e)(5)(i)(D); and

d. Revising paragraph (f)(2)(iii)(A).

The revisions and addition read as follows:

§ 490.109 Assessing significant progress toward achieving the performance targets for the National Highway Performance Program and the National Highway Freight Program.

* * * * *

(e) * * *

(4) *Insufficient data or information.* * * *

* * * * *

(ii) The data contained in HPMS do not meet the requirements under § 490.313(b)(4)(i) by the data extraction date specified in paragraph (d)(1)(i) of this section for the each of the Interstate System pavement condition measures in § 490.105(c)(1);

(iii) The data contained in HPMS do not meet the requirements under § 490.313(b)(4)(ii) by the data extraction date specified in paragraph (d)(1)(ii) of this section for the each of the non-Interstate NHS pavement condition measures in § 490.105(c)(2);

(iv) A State DOT reported data are not cleared in the NBI by the data extraction date specified in paragraph (d)(1)(iii) of this section for the each of the NHS bridge condition measures in § 490.105(c)(3);

(v) If a State DOT's data is determined insufficient, as described in paragraphs (e)(4)(ii) through (iv) of this section, in the year in which the Baseline Period Performance Report is due to FHWA for a measure in § 490.105(c)(1) through (3), the FHWA will determine the State DOT did not satisfy the criterion in paragraph (e)(2)(i) of this section, and FHWA will only use the criterion in (e)(2)(ii) of this section for determining if State DOT has made significant progress toward the achievement of the target for that measure for the entirety of the performance period.

* * * * *

(5) * * *

(i) * * *

(A) Natural or man-made disasters that caused delay in NHPP or NHFP project delivery, extenuating delay in data collection, or damage/loss of data system;

(B) Sudden discontinuation of Federal Government furnished data due to natural and man-made disasters declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act or sudden discontinuation of Federal Government furnished data due to lack of funding;

(C) New law or regulation directing State DOTs to change metric or measure calculation; or

(D) Presidentially declared national emergency that caused delay in NHPP or NHFP project delivery, extenuating delay in data collection or submittal, or damage/loss of data system.

* * * * *

(f) * * *

(2) * * *

(iii) * * *

(A) The inventory of truck freight bottlenecks shall include the route and milepost location for each identified bottleneck, road attributes data reported to HPMS, Average Annual Daily Traffic (AADT), Single-Unit Truck and Bus AADT (AADT_Single_Unit), Combination Truck AADT (AADT_Combination), Travel-time data and measure of delay, such as travel time reliability, or Average Truck Speeds, capacity feature causing the bottleneck or any other constraints applicable to trucks, such as geometric constraints, weight limits or steep grades.

* * * * *

6. Revise § 490.111 to read as follows:

§ 490.111 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Federal Highway Administration (FHWA) must publish a document in the Federal Register and the material must be available to the public. All approved incorporation by reference (IBR) material is available for inspection at FHWA and at the National Archives and Records Administration (NARA). Contact the FHWA at FHWA, Office of Highway Policy Information at 1200 New Jersey Avenue SE., Washington, DC 20590; (202–366–4631); www.fhwa.dot.gov. For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov. The material may be obtained from the sources in the following paragraphs of this section.

(a) The American Association of State Highway and Transportation Officials (AASHTO), 555 12th Street, NW, Suite 1000, Washington, DC 20004; (202) 624–5800; www.transportation.org.

(1) AASHTO Standard M328–14, Standard Specification for Transportation Materials and Methods of Sampling and Testing, Inertial Profiler, 2014, 34th/2014 Edition; IBR approved for § 490.309(b).

(2) AASHTO Standard R57–14, Standard Specification for Transportation Materials and Methods of Sampling and Testing, Standard Practice for Operating Inertial Profiling Systems, 2014, 34th/2014 Edition; IBR approved for § 490.309(b).

(3) AASHTO Standard R36-21, Standard Specification for Transportation Materials and Methods of Sampling and Testing, Standard Practice for Evaluating Faulting of Concrete Pavements, 41st/2021 edition, 2021 (<https://store.transportation.org/Item/PublicationDetail?ID=4612>); IBR approved for § 490.309(b).

(4) AASHTO Standard R43-13, Standard Specification for Transportation Materials and Methods of Sampling and Testing, Standard Practice for Quantifying Roughness of Pavement, 2014, 34th/2014 Edition, IBR approved for § 490.311(b).

(b) American National Standards Institute, Inc. (ANSI), 1899 L Street NW., 11th Floor, Washington, DC 20036; (202) 293-8020; www.ansi.org.

(1) ANSI D16.1-2017, Manual on Classification of Motor Vehicle Traffic Accidents, 8th edition, approved December 18, 2017; IBR approved for § 490.205.

(2) [Reserved]

(c) The Federal Highway Administration, 1200 New Jersey Avenue SE., Washington, DC 20590; (202) 366-4631; www.fhwa.dot.gov.

(1) Highway Performance Monitoring System Field Manual (“HPMS Field Manual”), [Publication Year]; IBR approved for §§ 490.103; 490.309(a) and (b); 490.311; 490.319(a) and (b).

(2) Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges, includes: Errata Sheet for Coding Guide 06/2011, Report No. FHWA–PD–96–001, December 1995; IBR approved for §§ 490.409(e); 490.411(f).

(d) The National Highway Transportation Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590; (888) 327-4236; www.nhtsa.gov.

(1) DOT HS 813 525 (“MUCC”), Model Minimum Uniform Crash Criteria Guideline, 6th edition, 2024 (<https://www.nhtsa.gov/mmucc-1>); IBR approved for § 490.205.

(2) [Reserved]

Subpart B – National Performance Management Measures for the Highway Safety Improvement Program

7. Amend § 490.205 by:

- a. Removing the definition for ‘5-year rolling average’ and adding, in its place, the definition for “3-year average”;
- b. Adding the definition for “Baseline safety performance”;
- c. Revising the definition for “Fatality Analysis Reporting System”
- d. Removing the definition for “KABCO”;
- e. Revising the definitions for “Number of non-motorized fatalities”, “Number of non-motorized serious injuries”, “Number of serious injuries”, and “Serious injuries”.

The additions and revisions read as follows:

§ 490.205 Definitions.

* * * * *

3-year average means the average of 3 individual, consecutive annual points of data (e.g., the 3-year average of the annual fatality rate).

* * * * *

Baseline safety performance means the 3-year average data for a safety performance measure for the year prior to the establishment of the performance target reported to FHWA.

* * * * *

Fatality Analysis Reporting System (FARS) means the nationwide census providing yearly public data regarding fatal injuries suffered in motor vehicle traffic crashes, as published by NHTSA.

* * * * *

Number of non-motorized fatalities means the total number of fatalities (as defined in this section) with the FARS person attribute codes for Pedestrian, Bicyclist, Other Cyclist, and Person on Personal Conveyance (includes motorized, non-motorized, and unknown whether it was motorized or non-motorized).

Number of non-motorized serious injuries means the total number of persons suffering at least one serious injury (as defined in ‘Number of serious injuries’) where the injured person is, or is equivalent to, a pedestrian (2.2.36) or a pedalcyclist (2.2.39) as defined in the ANSI D16.1-2017 (incorporated by reference, see § 490.111).

Number of serious injuries means the total number of persons suffering at least one serious injury for each separate motor vehicle traffic crash during a calendar year, as reported by the State, where the crash involves one or more motor vehicles in-transport, that originated on or had at least one harmful event (i.e., injury or damage) on a trafficway, and the injury status is “(A) suspected serious injury” as described in MMUCC, (incorporated by reference, see § 490.111).

* * * * *

Serious injuries means a “(A) suspected serious injury” as defined in the MMUCC.

8. Revise § 490.207 to read as follows:

§ 490.207 National performance management measures for the Highway Safety

Improvement Program.

(a) There are five performance measures for the purpose of carrying out the HSIP.

They are:

- (1) Number of fatalities;
- (2) Rate of fatalities;
- (3) Number of serious injuries;
- (4) Rate of serious injuries; and,
- (5) Number of non-motorized fatalities and non-motorized serious injuries.

(b) Each performance measure is based on a 3-year average. The performance measures are calculated as follows:

(1) The performance measure for the number of fatalities is the 3-year average of the total number of fatalities for each State and shall be calculated by adding the number of fatalities for each of the most recent 3 consecutive years ending in the year for which the performance targets are established, dividing by 3, and rounding to the tenths decimal place. FARS Annual Report File (ARF) may be used if Final FARS is not available.

(2) The performance measure for the rate of fatalities is the 3-year average of the State's fatality rate per VMT and shall be calculated by first calculating the number of fatalities per 100 million VMT for each of the most recent 3 consecutive years ending in the year for which the performance targets are established, adding the results, dividing by 3, and rounding to the thousandths decimal place. The FARS ARF may be used if Final FARS is not available. State VMT data are derived from the HPMS. The Metropolitan Planning Organizations (MPO) VMT is estimated by the MPO. The sum of the fatality rates is divided by three and then rounded to the thousandths decimal place.

(3) The performance measure for the number of serious injuries is the 3-year average of the total number of serious injuries for each State and shall be calculated by

adding the number of serious injuries for each of the most recent 3 consecutive years ending in the year for which the performance targets are established, dividing by three, and rounding to the tenths decimal place.

(4) The performance measure for the rate of serious injuries is the 3-year average of the State's serious injuries rate per VMT and shall be calculated by first calculating the number of serious injuries per 100 million VMT for each of the most recent 3 consecutive years ending in the year for which the performance targets are established, adding the results, dividing by three, and rounding to the thousandths decimal place. State VMT data are derived from the HPMS. The MPO VMT is estimated by the MPO.

(5) The performance measure for the number of non-motorized fatalities and non-motorized serious injuries is the 3-year average of the total number of non-motorized fatalities and non-motorized serious injuries for each State and shall be calculated by adding the number of non-motorized fatalities to the number non-motorized serious injuries for each of the most recent 3 consecutive years ending in the year for which the performance targets are established, dividing by three, and rounding to the tenths decimal place. FARS ARF may be used if Final FARS is not available.

9. Revise § 490.209 to read as follows:

§ 490.209 Establishment of performance targets.

(a) State DOTs shall establish performance targets triennially for each performance measure identified in § 490.207(a) in a manner that is consistent with the following:

(1) State DOT performance targets shall be identical to the performance targets established by the State Highway Safety Office for common performance measures reported in the State's triennial Highway Safety Plan, subject to the requirements of 23 U.S.C. 402(k)(4), and as coordinated through the State Strategic Highway Safety Plan.

(2) State DOT performance targets shall represent performance outcomes triennially (every third calendar year). The first triennial performance targets will be established in [year to be inserted] and will represent performance for calendar years [year to be inserted] through [year to be inserted] based on a 3-year average. The performance targets shall be reported to the FHWA consistent with the requirements in § 490.213(a).

(3) State DOT performance targets shall represent the anticipated performance outcome for all public roadways within the State regardless of ownership or functional class.

(4) State DOT performance targets shall demonstrate constant or improved performance from the baseline safety performance.

(5) Unless approved by FHWA and subject to § 490.209(a)(1), a State DOT shall not change one or more of its performance targets for a given triennial cycle once submitted to the FHWA.

(b) In addition to performance targets described in paragraph (a) of this section, State DOTs may, as appropriate, for each performance target in paragraph (a) of this section establish additional performance targets for portions of the State.

(1) A State DOT shall declare and describe the boundaries used to establish each additional performance target, as required by § 490.213(a).

(2) State DOTs may select any number and combination of urbanized area boundaries and may also select a single non-urbanized area boundary for the establishment of additional performance targets.

(3) The boundaries used by the State DOT for additional performance targets shall be contained within the geographic boundary of the State.

(c) The Metropolitan Planning Organizations (MPO) shall establish performance targets triennially for each of the measures identified in § 490.207(a), where applicable, in a manner that is consistent with the following:

(1) The MPOs shall establish performance targets not later than 180 days after the respective State DOT establishes and reports performance targets to the FHWA.

(2) The MPO performance targets shall represent performance outcomes anticipated for the same calendar years as the State DOT performance targets.

(3) After the MPOs within each State establish the performance targets, the State DOT must be able to provide those performance targets to FHWA, upon request.

(4) For each performance measure, the MPOs shall establish a performance target by either:

(i) Agreeing to plan and program projects so that they contribute toward the accomplishment of the State DOT performance target for that performance measure; or

(ii) Committing to a quantifiable performance target that demonstrates constant or improved performance for that performance measure for their metropolitan planning area.

(5) The MPOs that establish quantifiable fatality rate or serious injury rate performance targets shall report the VMT estimate used for such performance targets and the methodology used to develop the estimate. The methodology should be consistent with other Federal reporting requirements, if applicable.

(6) The MPO performance targets established under paragraph (c)(4) of this section specific to the metropolitan planning area shall represent the anticipated performance outcome for all public roadways within the metropolitan planning boundary regardless of ownership or functional class.

(d)(1) The State DOT and relevant MPOs shall coordinate on the establishment of performance targets in accordance with 23 CFR part 450 to ensure consistency, to the maximum extent practicable.

(2) The MPOs with multi-State boundaries that agree to plan and program projects to contribute toward State DOT performance targets in accordance with paragraph (c)(4)(i) of this section shall plan and program safety projects in support of the State DOT performance targets for each area within each State (e.g., MPOs that extend into two States shall agree to plan and program projects to contribute toward two separate sets of performance targets (one set for each State)).

10. Revise § 490.211 to read as follows:

§ 490.211 Determining whether a State department of transportation has met or made significant progress toward meeting performance targets.

(a) The determination for having met or made significant progress toward meeting the performance targets under 23 U.S.C. 148(i) will be determined based on:

(1) The most recent available Final FARS data for the fatality number. The FARS ARF may be used if Final FARS is not available;

(2) The most recent available Final FARS and HPMS data for the fatality rate. The FARS ARF may be used if Final FARS is not available;

(3) The most recent available Final FARS data for the non-motorized fatality number. The FARS ARF may be used if Final FARS is not available;

(4) State reported data for the serious injuries number;

(5) State reported data and HPMS data for the serious injuries rate; and

(6) State reported data for the non-motorized serious injuries number.

(b) The State-reported serious injury data and non-motorized serious injury data will be taken from the HSIP annual report, prepared in accordance with 23 CFR part 924.

(c) The FHWA will evaluate whether a State DOT has met or made significant progress toward meeting performance targets.

(1) The FHWA will not evaluate any additional performance targets a State DOT may establish under § 490.209(b).

(2) A State DOT is determined to have met or made significant progress toward meeting its performance targets when at least four of the performance targets established under § 490.207(a) are:

(i) Met; or

(ii) The outcome for a performance measure is less than the baseline safety performance for a performance measure. For example, of the State DOT's five performance targets, the State DOT is determined to have met or made significant progress toward meeting its performance targets if it met two performance targets and the outcome is less than the measure for the year prior to the establishment of the performance target for two other performance targets.

(d) If a State DOT has not met or made significant progress toward meeting performance targets in accordance with paragraph (c) of this section, the State DOT must comply with 23 U.S.C. 148(i) for the subsequent 3 fiscal years.

(e) The FHWA will determine whether a State DOT has met or made significant progress toward meeting performance targets following the last calendar year for which the performance targets are established, and then triennially thereafter.

(f) The FHWA will continue to assess prior year performance targets annually, based on a 5-year rolling average, to determine met or made significant progress toward meeting calendar year [year to be inserted] performance targets in [year to be inserted].

(g) The FHWA will determine that a State DOT has not met or made significant progress toward the achievement of performance targets if a State DOT does not report the required data in the HSIP annual report, in accordance with § 490.213(b).

(h) The FHWA will consider extenuating circumstances documented by the State DOT in the assessment of progress toward met or made significant progress of performance targets.

(1) The FHWA will classify the assessment of progress toward the achievement of the triennial performance target as “progress not determined” if the State DOT has provided an explanation of the extenuating circumstances beyond the control of the State DOT that prevented it from meeting or making significant progress toward the achievement of the triennial performance targets and the State DOT has quantified the impacts on the performance that resulted from the circumstances, which are:

(i) Natural or man-made disasters declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act that caused delay in data collection;

(ii) [Reserved]

(iii) New law or regulation directing State DOTs to change metric or measure calculation; or

(iv) Presidentially declared national emergency that impacts the collection or submittal of data.

(2) If the State DOT’s explanation, described in paragraph (h)(1) of this section, is accepted by the FHWA, then the progress toward achieving the safety performance targets will be classified as “progress not determined”.

11. Revise § 290.213 to read as follows:

§ 490.213 Reporting of Performance Targets for the Highway Safety Improvement Program.

(a) The performance targets established by the State DOT shall be reported to the FHWA by [date to be inserted], and triennially thereafter, in accordance with 23 CFR part 924.

(b) The State DOT shall annually report on performance in the HSIP annual report, in accordance with 23 CFR part 924. The State DOT shall, at a minimum, include the most recent 6 consecutive years of State reported serious injury data and non-motorized serious injury data in each year’s HSIP annual report.

(c) The MPOs shall triennially report their established performance targets to their respective State DOT, in a manner that is documented and mutually agreed upon by both parties.

(d) The MPOs shall report baseline safety performance, VMT estimate and methodology if a quantifiable rate performance target was established, and progress toward the achievement of their performance targets in the system performance report in the metropolitan transportation plan in accordance with 23 CFR part 450. Performance and progress shall be reported based on the following data sources:

(1) The most recent available Final FARS data for the fatality number. The FARS ARF may be used if Final FARS is not available;

(2) The most recent available Final FARS and MPO VMT estimate for the fatality rate. The FARS ARF may be used if Final FARS is not available;

(3) The most recent available Final FARS data for the non-motorized fatality number. The FARS ARF may be used if Final FARS is not available;

(4) State reported data for the serious injuries number;

(5) State reported data and MPO VMT estimate for the serious injuries rate; and

(6) State reported data for the non-motorized serious injuries number.

Subpart C – National Performance Management Measures for Assessing Pavement Condition

12. Amend § 490.305 by revising paragraph (3) of the definition for “Cracking Percent” to read as follows:

§ 490.305 Definitions

* * * * *

Cracking Percent * * *

(3) For CRCP, the Cracking Percent is the percentage of pavement surface with longitudinal cracking or punchouts, spalling or other visible defects.

* * * * *

13. Amend § 490.309 by revising paragraphs (a), (b)(1)(i)(B), (b)(1)(iv)(A), (b)(2)(i)(B), (b)(2)(ii)(B), (b)(2)(iii)(A), (b)(3)(v) through (vii), and the introductory text of paragraph (c) to read as follows:

§ 490.309 Data requirements.

(a) The performance measures identified in § 490.307 are to be computed using methods in § 490.313 from the four condition metrics and the three relevant data items contained within the HPMS, which are collected and reported following the HPMS Field Manual (incorporated by reference, see § 490.111). State DOTs shall report four condition metrics for each pavement section: IRI, rutting, faulting, and Cracking_Percent. State DOTs shall also report three relevant data items: Through_Lanes, Surface_Type, and Structure_Type. All pavement data collected after January 1, 2018, for Interstate highways and January 1, 2020, for non-Interstate National Highway System routes shall meet the requirements of this section.

(b) * * *

(1) * * *

(i) * * *

(B) In the rightmost travel lane or an adjacent lane for all data if the rightmost travel lane is not readily accessible due to construction, closure, excessive congestion, or other events impacting access;

* * * * *

(iv) * * *

(A) The PSR shall be determined as a value from 0.1 to 5.0 per the procedures prescribed in the HPMS Field Manual;

* * * * *

(2) * * *

(i) * * *

(B) In the rightmost travel lane or an adjacent lane for all data if the rightmost travel lane is not accessible due to construction, closure, excessive congestion, or other events impacting access;

* * * * *

(ii) * * *

(B) In the rightmost travel lane or an adjacent lane for all data if the rightmost travel lane is not accessible due to construction, closure, excessive congestion, or other events impacting access;

* * * * *

(iii) * * *

(A) The PSR shall be determined as a 0.1 to 5.0 value per the procedures prescribed in the HPMS Field Manual;

* * * * *

(3) * * *

(v) For CRCP the method to collect the data needed to determine the Cracking_Percent metric is described in the HPMS Field Manual and includes longitudinal cracking or punchouts, spalling, or other visible defects.

(vi) For asphalt pavements, the method to collect data needed to determine the rutting metric shall be the method(s) identified in the HPMS Field Manual.

(vii) For jointed concrete pavements, the method to collect data needed to determine the faulting metric shall be in accordance with AASHTO Standard R36-21 (incorporated by reference, see § 490.111).

(c) State DOTs shall collect data in accordance with the following relevant HPMS requirements to report Through_Lanes, Surface_Type, and Structure_Type.

* * * * *

14. Amend § 490.311 by revising paragraphs (a), (b)(5)(ii), (c)(3)(i) through (iii), and (d) to read as follows:

§ 490.311 Calculation of pavement metrics.

(a) The condition metrics and relevant data items needed to calculate the pavement performance measures shall be calculated in accordance with the HPMS Field Manual (incorporated by reference, see § 490.111), except as noted below.

(b) * * *

(5) * * *

(ii) The PSR shall be determined as a 0.1 to 5.0 value per the procedures prescribed in the HPMS Field Manual.

* * * * *

(c) * * *

(3) * * *

(i) The StateID, RouteID, BeginPoint, and EndPoint shall be reported as specified in the HPMS Field Manual (incorporated by reference, see § 490.111) for each of the four condition metrics.

(ii) The BeginDate shall be reported as required in the HPMS Field Manual for each of the four condition metrics; and

(iii) The ValueDate shall be reported as the month and year of data collection for each of the four condition metrics.

* * * * *

(d) The three data items, Through_Lanes, Surface_Type, and Structure_Type shall be reported to the HPMS as directed in Chapter 4 of the HPMS Field Manual for the entire extent of the NHS.

(1) Section Lengths for the three data items are not required to meet the 0.1 mile nominal length but may be any logical length as defined in the HPMS Field Manual.

(2) The three data elements shall be reported to the HPMS for the Interstate System by April 15 of each year.

(3) The three data elements shall be reported to the HPMS for the non-Interstate NHS by June 15 of each year that data reporting is required.

15. Amend § 490.313 by revising paragraph (b)(4) and (f)(2) through (5) to read as follows:

§ 490.313 Calculation of performance management measures.

* * * * *

(b) * * *

(4) The FHWA will determine that a reported section in HPMS has a missing, invalid or unresolved data on the dates specified in § 490.317(b) for Interstate System and § 490.109(d)(1)(ii) for non-Interstate NHS, if a reported section does not meet any one of the data requirements specified in §§ 490.309 and 490.311(c) or that reported section does not provide sufficient data to determine its Overall Condition specified in paragraphs (c) through (f) of this section:

(i) Total mainline lane-miles of missing, invalid, or unresolved sections for Interstate System on the date specified in § 490.317(b) shall be limited to no more than 5.0 percent of the total Interstate System lane miles less the sections excluded in § 490.313(f)(1).

(ii) Total mainline lane-miles of missing, invalid, or unresolved sections for non-Interstate NHS on the dates specified in § 490.109(d)(1)(ii) shall be limited to no more than 5.0 percent of the total non-Interstate NHS lane miles less the sections excluded in § 490.313(f)(1).

(iii) Where applicable, for each pavement section with missing condition metric(s) or relevant data item(s), State DOTs shall include in the HPMS submittal the

specific code identified in the HPMS Field Manual (incorporated by reference, see § 490.111) noting the reason the data was not collected.

(iv) Calculation of overall pavement conditions in any State meeting the requirements of § 490.309(b) shall be based only on sections data extracted on the dates specified in § 490.317(b) for Interstate System and § 490.109(d)(1)(ii) for non-Interstate NHS.

(v) State DOTs not meeting the requirements of § 490.309(b) will be considered as not in compliance with § 420.105(b) requiring State DOTs to submit data to the HPMS and not in compliance with § 490.107 requiring reporting on performance targets.

(vi) Failure to meet the requirements of § 490.309(b) or paragraph (b)(4)(i) of this section on the date specified in § 490.317(b) for the Interstate System will be considered as not meeting the minimum requirements for pavement conditions on the Interstate System and that State DOT is subject to the penalties in § 490.315.

* * * * *

(f) * * *

(2) For § 490.307(a)(1) the measure for percentage of lane-miles of the Interstate System in Good condition shall be computed to the one tenth of a percent as follows:

$$100 \times \frac{\sum_{g=1}^{Good} \{(\text{EndPoint} - \text{BeginPoint}) \times \text{Through_lanes}\}_{\text{section } g}}{\sum_{t=1}^{Total} \{(\text{EndPoint} - \text{BeginPoint}) \times \text{Through_lanes}\}_{\text{section } t}}$$

Where:

Good = total number of mainline highway Interstate System sections where the overall condition is Good;

g = a section's overall condition is determined Good per paragraph (b) or (c) of this section;

t = an Interstate System section;

Total = total number of mainline highway Interstate System sections excluding bridges, unpaved surface and “other” surface types, and missing data sections, described in paragraphs (f)(1) and (b)(4)(i) of this section.

BeginPoint = Begin Milepost of each section g or t;

EndPoint = End Milepost of each section g or t; and

Through_lanes = the number of lanes designated for through-traffic represented by a section g or t.

(3) For § 490.307(a)(2) the measure for percentage of lane-miles of the Interstate System in Poor condition shall be computed to the one tenth of a percent as follows:

$$100 \times \frac{\sum_{g=1}^{Poor} \{(\text{EndPoint} - \text{BeginPoint}) \times \text{Through_lanes}\}_{\text{section } p}}{\sum_{t=1}^{Total} \{(\text{EndPoint} - \text{BeginPoint}) \times \text{Through_lanes}\}_{\text{section } t}}$$

Where:

Poor = total number of mainline highway Interstate System sections where the overall condition is Poor;

p = a section's overall condition is determined Poor per paragraph (b) or (c) of this section;

t = an Interstate System section;

Total = total number of mainline highway Interstate System sections excluding bridges, unpaved surface and “other” surface types, and missing data sections, described in paragraphs (f)(1) and (b)(4)(i) of this section;

BeginPoint = Begin Milepost of each section p or t;

EndPoint = End Milepost of each section p or t; and

Through_lanes = the number of lanes designated for through-traffic represented by a section p or t.

(4) For § 490.307(a)(3) the measure for percentage of lane-miles of the non-Interstate NHS in Good condition in § 490.307(a)(3) shall be computed to the one tenth of a percent as follows:

$$100 \times \frac{\sum_{g=1}^{Good} \{(\text{EndPoint} - \text{BeginPoint}) \times \text{Through_lanes}\}_{segment\ g}}{\sum_{t=1}^{Total} \{(\text{EndPoint} - \text{BeginPoint}) \times \text{Through_lanes}\}_{segment\ t}}$$

Where:

Good = total number of mainline highway non-Interstate NHS sections where the overall condition is Good;

g = a section's overall condition is determined Good per paragraph (b), (c) or (d) of this section;

t = a non-Interstate NHS section;

Total = total number of mainline highway non-Interstate NHS sections excluding bridges, unpaved surface and “other” surface types, and missing data sections, described in paragraphs (f)(1) and (b)(4)(i) of this section;

BeginPoint = Begin Milepost of each section g or t;

EndPoint = End Milepost of each section g or t; and

Through_lanes = the number of lanes designated for through-traffic represented by a section g or t.

(5) For § 490.307(a)(4) the measure for percentage of lane-miles of the non-Interstate NHS in Poor condition in § 490.307(a)(4) shall be computed to the one tenth of a percent as follows:

$$100 \times \frac{\sum_{g=1}^{Poor} \{(\text{EndPoint} - \text{BeginPoint}) \times \text{Through_lanes}\}_{section\ p}}{\sum_{t=1}^{Total} \{(\text{EndPoint} - \text{BeginPoint}) \times \text{Through_lanes}\}_{section\ t}}$$

Where:

Poor = total number of mainline highway non-Interstate NHS sections where the overall condition is Poor;

p = a section's overall condition is determined Poor per paragraph (b), (c) or (d) of this section;

t = a non-Interstate NHS section;

Total = total number of mainline highway non-Interstate NHS sections excluding bridges, unpaved surface and “other” surface types, and missing data sections, described in paragraphs (f)(1) and (b)(4)(i) of this section;

BeginPoint = Begin Milepost of each section p or t;

EndPoint= End Milepost of each section p or t; and

Through_lanes = the number of lanes designated for through-traffic represented by a section p or t.

16. Amend § 490.317 by adding paragraphs (c)(1) and (2) to read as follows:

§ 490.317 Penalties for not maintaining minimum Interstate System pavement condition.

* * * * *

(c) * * *

(1) FHWA shall use the determination from the previous year to carry out paragraph (a) of this section when FHWA determines a State DOT is not in compliance with § 490.315(a) or § 490.315(b) due to an extenuating circumstance listed in § 490.109(e)(5) related to the collection or submittal of data.

(2) State DOTs will provide a description of any applicable extenuating circumstances for FHWA’s consideration by the date specified in § 490.317(b).

* * * * *

17. Amend § 490.319 by revising paragraph (c)(1)(ii) to read as follows:

§ 490.319 Other requirements.

* * * * *

(c) * * *

(1) * * *

(ii) Certification process for persons performing data collection;

* * * * *

**Subpart E – National Performance Management Measures to Assess Performance
of the National Highway System**

18. In § 490.509 amend paragraph (d) by removing the text “and/or” and adding, in its place, the text “or”.

**Subpart G – National Performance Management Measures for Assessing the
Congestion Mitigation and Air Quality Improvement Program – Traffic Congestion**

19. In § 490.709, amend paragraph (e)(1)(i) by removing the text “and/or” and adding, in its place, the text “or”.

[FR Doc. 2024-00373 Filed: 1/24/2024 8:45 am; Publication Date: 1/25/2024]